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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,404

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Michael A. Kusenko

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07/27/2006

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EXAMINER

KRAMER, NICOLE R

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/605,404	Applicant(s) KUSENKO, MICHAEL A.	
	Examiner Nicole R. Kramer	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: "Body Jumpers to Restore Energy Flow in a Human Body to its Natural Pathway."

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, each independent claim as amended recites a limitation relating to not having any external electrical sources connected to the electrical conducting pads. Although such negative limitations are not inherently ambiguous or uncertain, any negative limitation or exclusionary proviso must have basis in the original disclosure. See MPEP 2173.05(i). The mere absence of a positive recitation (i.e., the mere absence of disclosure relating to an external electrical source)

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is not basis for an exclusion. Examiner is unable to locate disclosure in the original specification for the claimed negative limitation. Appropriate correction or explanation is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 7-9 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0044384 ("Leber et al.").

Leber et al. discloses an energy therapy device for stimulating energy flow along meridians. A therapy pad (100) is formed of a plurality of energy-emitting elements (102) arranged on a substrate (104), wherein the energy-emitting elements are electrically connected to each other via electrical connections (108) (see Fig. 2 and associated text at paragraph 0064). The energy-emitting elements (102) may be electrodes (see paragraph 0049), which are inherently electrically conducting pads. Further, Leber et al. discloses that the energy-emitting elements may be electrically connected to each other by point-to-point wiring (see paragraph 0055).

With respect to the claims recitations relating to the conducting pads “without any electrical connections to external electrical sources,” Examiner notes that such recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The therapy pad 100 that contains a plurality of energy-emitting elements 102 is capable not being connected to any electrical connections to external electrical sources.

In addition, the recitations that the claimed devices are “adapted for restoring energy along a [governing or central] meridian in a human body to its natural pathway” are also intended use recitations. The device disclosed in Leber et al. is capable of restoring energy along a meridian in a human body to its natural pathway and thus anticipates claims 8 and 9. Further, the recitations have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

With respect to the intended placement of the electrically conducting pads in claims 7 and 9 (i.e., that the conducting pads are adapted to be placed at a particular location on the human body), Examiner notes that such recitations of the intended use

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of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The therapy pad 100 that contains a plurality of energy-emitting elements 102 is capable of being placed over the particular patient locations of claims 7 and 9, and thus Leber et al. anticipates claims 7 and 9.

With respect to the intended placement of the electrically conducting pads in claim 8, Leber et al. discloses placing a first energy-emitting element 102 on the patient's back on a left side of the spine about midway between a tailbone and a waist of the body, and placing a second energy-emitting element 102 on the patient's back on a right side of the spine about midway between a tailbone and a waist of the body (see disclosed placement of the bottom therapy pad 700 in Fig. 7).

6. Claims 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication 2004/0176806 ("Markoll").

Markoll discloses two electrical conducting pads (signal generating units 11 and 12 are inherently electrically conducting pads) that are connected to each other via an electrical conducting wire (16). With respect to the intended placement of the electrically conducting pads in claims 8 and 9 (i.e., that the conducting pads are adapted to be placed at a particular location on the human body), Examiner notes that such recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

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distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The device disclosed in Markoll is capable of being placed over the particular patient locations of claims 8 and 9, and thus Markoll anticipates claims 8 and 9.

With respect to the claims recitations relating to the conducting pads “without any electrical connections to external electrical sources,” Examiner notes that such recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The two electrical conducting pads (signal generating units 11 and 12 are inherently electrically conducting pads) that are connected to each other via an electrical conducting wire (16) are capable not being connected to any electrical connections to external electrical sources.

In addition, the recitations that the claimed devices are “adapted for restoring energy along a [governing or central] meridian in a human body to its natural pathway” are also intended use recitations. The device disclosed in Markoll is capable of restoring energy along a meridian in a human body to its natural pathway and thus Markoll anticipates claims 8 and 9. Further, the recitations have not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural

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limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 3, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,277,142 ("Pinter") in view of U.S. Patent No. 6,132,452 ("the '452 patent"), which is a continuation-in-part of Pinter.

With respect to claims 1 and 7, Pinter discloses a method for restoring energy in the human body to its natural pathway. Pinter discloses that an apparatus (20) that includes a plurality of conductive elements (22, 24, 26, 28, 30) are placed across predetermined regions of the organism (see Abstract). Multiple devices (2) are worn on the organism on reflex points or meridian termini (see col. 5, lines 35-40). Pinter discloses placing a first device over the belly button of the body (Examiner considers location 56 of Fig. 3 to be approximately over the belly button of the body), a second device at point on the left side of the body below the collar bone (approximately at location 54 of Fig. 3), and a third pad at point on the right side of the body below the collar bone (approximately at location 54 of Fig. 3). Pinter fails to specifically disclose that the position of the first, second, and third pads are held for about 2-3 minutes. It

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would have been obvious to one having ordinary skill in the art at the time of applicant's invention to hold the devices in place for as long as necessary, but not longer than necessary, in order to restore the energy flow in the human body to its natural pathway, since it has been held that discovering an optimum value (i.e., the amount of time to restore the energy flow in the human body to its natural pathway) of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Pinter fails to disclose that the devices (20) are connected to each other via an electrical conducting wire. However, Pinter discloses that the devices 20 are designed to receive energy that flows within the meridians of the patient, and transmit that energy to another reflex point in the vicinity of that or another meridian (see col. 7, lines 42-63). The '452 patent teaches a device for promoting energy flow in an organism, wherein the device includes the conductive units 20 of Pinter placed in recesses 118. A metallic structure 102 is then placed within primary recess portion 116 (see, for example, col. 13, lines 25-50), and thus necessarily transmits energy between the conductive units 20. Thus, the '152 patent teaches that it is desirable to electrically connect the conductive units 20 to each other to promote the energy flow in an organism. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the device configurations disclosed in Pinter such that the conductive units 20 are electrically connected to each other as taught by the '452 patent in order to promote the energy flow in an organism from one device located at the first reflex point to another device located along that or another meridian.

With respects to claim 3 and 8, Pinter discloses placing a first device on the patient's back on a left side of the spine about midway between a tailbone and a waist of the body, and placing a second device on the patient's back on a right side of the spine about midway between a tailbone and a waist of the body (see disclosed placement of devices 20 at location 62 in Fig. 4).

With respect to claims 5 and 9, Pinter discloses placing a first device above a pubic bone on a right side of the body, and placing a second device above a pubic bone on a left side of the body (Examiner considers locations 46 of Fig. 2 to be approximately one inch above the pubic bone).

Response to Arguments

9. Initially, Examiner notes that the previous rejection of claims 8-9 based on Gliner et al. (U.S. Patent No. 6,178,357) has been withdrawn because upon reconsideration of the reference, it appears that the electrode disks are not connected to each other via lead line 16 as previously stated. Rather, each electrode disk is connected to a defibrillator via a separate lead line 16 (see col. 3, lines 23-30). Although the multiple lead lines may be arranged to combine to form a single wire at some point (see col. 4, lines 18-25), the single wire still contains both lead wires and thus do not electrically connect the electrode disks.

10. With respect to the rejections of claims 7-9 based on Leber et al. and/or Markoll, Applicant's arguments filed 5/22/06 have been fully considered but they are not persuasive. Specifically, Applicant argues that nowhere in either reference is it taught

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or even suggested to interconnect electrical conducting pads without any external electrical sources. Although both references teach the connection of the electrical conducting pads to an external electrical source, the prior art structures are capable of not being connected to any electrical connections to external electrical sources.

Recitations of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

11. With respect to the rejections of claims 1, 3, 5, and 7-9 based on Pinter, Applicant's arguments filed 5/22/06 have been fully considered but are moot in view of the new grounds of rejection presented above (Pinter in view of the '452 patent).

Allowable Subject Matter

12. Claims 2, 4, and 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

13. Please see previous Office Action dated 2/22/2006 for the statement of reasons for the indication of allowable subject matter.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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7/14/06


George Manuel
Primary Examiner